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No. [redacted]

IN THE

Supreme Court of the United States

.....Term

IN THE MATTER OF THE ESTATE OF H. A. GAND, deceased,
BALBINE DENISE GAND BARON
Petitioner,

v.

ROGER E. VALLETON, Administrator,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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METROPOLITAN PRESS AND WESTERN

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R.C.W. 11.04.080 ..... 2, 3 *et seq.*

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TEXTBOOKS

Wolfson and Kurland, "Robertson and Kirkman, Jurisdiction of the Supreme Court of the United States." 1951 ed., Sec. 89 *et seq.*, pp. 161-190 13

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Petitioner Balbine Denise Gand Baron petitions this Honorable Court for a Writ of Certiorari to review that certain remittitur of the Supreme Court of the State of Washington in the above entitled cause, entered on February 8, 1963.

CITATIONS TO OPINIONS BELOW

The full and final decision of the Supreme Court of the State of Washington was entered on February 8, 1963. The decision of the Supreme Court of the State of Washington in said cause was filed by the Court below on December 27, 1962, is reported in 161 Washington Decisions 133, 377 P.(2d) 262, and appears herein under Appendix A. Thereafter, and within 30 days of said date, the petitioner filed her petition for a rehearing as set forth under Appendix B of this petition. On February 8, 1963, the said petition was denied; and the decision of the State Supreme Court became its final judgment in said

cause on appeal. Copy of the Court's remittitur appears in Appendix C of this petition.

BASIS OF JURISDICTION

The Supreme Court of the State of Washington had for consideration the construction and application of three statutes of the said state to the agreed facts in this case, which are:

Henri A. Gand, a French immigrant, died single in the city of Seattle, without a will, and left no father, mother, brother, or sister surviving him. Mr. Roger E. Valleton and Mrs Balbine Denise Gand Baron are children of the same mother, predeceased sister of the intestate, the first being the sole issue of her marriage in the United States, and the second, an illegitimate child of Mrs. Valleton before her marriage. They are the sole claimants of Mr. Gand's estate of an approximate net amount of $34,000.00. The Probate Court by its decree granted the said estate to the legitimate son of decedent's said predeceased sister; and on appeal the Supreme Court of the State affirmed the said decree.

The statutes of the State of Washington applicable to the rights of the two contestants are set forth in the opinion of the Supreme Court and under Appendix D of this petition. Sections 11.04.080 and 11.04.090 of Revised Code of Washington, both enacted in 1881, (before Washington was a state) deal specially with rights of illegitimate children to estates of their mother and her kin, as well as rights of the mother and her "heirs at law" to estates of illegitimate children dying intestate. Section 11.04.020 (3) is the general statute on descent and distribution of property of persons dying intestate, last amended by the State

Legislature in 1927; and in the situation in which Mr. Gand was, (unmarried and without father or mother, brothers or sisters, surviving) it provides that his estate shall go in equal shares "to the children of any deceased brother or sister by right of representation."

QUESTIONS INVOLVED

Question 1

There being three statutes of the State of Washington dealing with the question at hand (RCW 11.04.080 and 11.04.090 on rights of inheritance by and from illegitimate children, and 11.04.020 (3) inheritance by "children" of predeceased brothers or sisters), was it not error for the State Supreme Court to predicate its decision on the "special" statute 11.04.080 and completely disregard the other two germane statutes, all three in *pari materia*, in arriving at the legislative intent, and was not such action essentially arbitrary, depriving the petitioner of property without due process of law, guaranteed by Amendment XIV of the national Constitution?

Question 2

In any case, is it within the province of the State Legislature, once it has by statute recognized illegitimate children as "heirs of their mother" entitled to inherit "in the same manner as if he had been born in lawful wedlock," to interrupt the natural right to inherit of children so recognized, and by limiting an illegitimate's heirship rights to his her mother, but not to her kin or her "heirs at law," does it have the power to destroy their rights, contrary to "fixed notions of natural justice," hence, in conflict with Section 1 of the Fourteenth Amendment of the Constitution?

STATUTES INVOLVED

Sections 11.04.080, 11.04.090, and 11.04.020 (3) of Revised Code of Washington are set forth under Appendix D of this petition.

STATEMENT

Under the heading "BASIS OF JURISDICTION," above, petitioner sets out the agreed facts in this case.

REASONS FOR GRANTING WRIT

The Supreme Court below recognizes that the general statute on descent and distribution, RCW 11.04.020, does include illegitimate children as heirs by right of representation of their deceased mother, as follows:

> "We are urged to consider RCW 11.04.080, in *pari materia*, with RCW 11.04.020 (3):
>
> "'If there be no issue, nor husband, nor wife, nor father and mother, nor either, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation.'
>
> "As the appellant points out, she is indeed the child of a deceased sister of decedent, claiming part of the decedent's estate by right of representation, but she belongs to a class of children who are the subject of a special statute (RCW 11.04.080) which is plain and unambiguous." *In re Baker's Estate* (1956), 49 Wn.(2d) 609, 610, 304 P.(2d) 1051.
>
> "Where there is no ambiguity in the statute, there is nothing for the court to interpret."

Assuming that the special statute 11.04.080 is "plain and unambiguous," we submit that so is the statute 11.04.020, which admittedly includes illegitimate in the term "children," passed by the Legislature nearly half a century later.

We differ, naturally, that the said special statute is "plain and unambiguous." In petitioner's view, it is full of contradictions. But still, the question of construing all three statutes as a whole, in *pari materia*, cannot be bypassed. It must be faced and answered. The intent of the Legislature would be faulty otherwise. Even if they are not "inconsistent" with one another, still, they are in *pari materia*. (*Smith v. Higginbotham*, 48 A. (2d) 754), or, even if enacted at different sessions of the State Legislature. *In re Schneider's Estate*, 31 N.W. (2d) 261, 264, 72 S.D. 174:

> "The object of the rule of *pari materia* is to ascertain and carry into effect intention of legislature and it proceeds upon supposition that several statutes were governed by one spirit and policy and were intended to be consistent and harmonious in their several parts and provisions." (*In re Schneider's Estate.*)

The courts of the United States have almost unanimously condemned the common law concept or doctrine of *filius nullius*, as applicable to heirship rights of illegitimate children.

We set out herein some excerpts from decisions in several states.

Connecticut

> "We cannot think that this was the meaning which our legislature affixed to these words in this statute. That body was made up generally of plain men, and they made laws for plain men. That they understood the terms 'child' and 'children,' so far as the mother was concerned, to comprehend her illegitimate, as well as her legitimate offspring, we entertain no doubt. They used those terms in their common, popular signification, rather than with reference to

any legal or technical sense. They had as little reference to the technical meaning of words in the English common law, as they had to the English Law of Inheritance, which they disregarded altogether. (In *Dickinson's Appeal*, 42 Conn. 491, 19 Am. Reports, 553.)

California

"The next question, then, is who are the heirs of Susan? Section 1387, Civil Code, we think, answers the inquiry. Every illegitimate child *is in all* cases an heir of his mother, and inherits *in the same manner as if born in lawful wedlock*. There is no question as to the heirship of Albert E.; he is the legitimate son of his mother, Elizabeth. She (Elizabeth) was the illegitimate daughter of Susan. By Section 1387, just referred to, Elizabeth was the heir of her mother, being born out of wedlock, she is by the statute made heir of her mother in the same manner as if born in wedlock. Being, then, the heir of her mother, and dying leaving issue, the property of Suez goes to such issue; not because the issue is heir of Suez, but is heir of Susan. In this same section there is a proviso regarding the inheritable blood of an illegitimate child, expressed in the following words: 'But he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death his parents shall be intermarried,' etc.

"If Elizabeth (sister of Suez, addition by appellants), had died intestate and without issue, doubtless the estate of Suez would have gone to the Cunninghams, as the heirs of Susan, the mother of Elizabeth and Suez; but as Albert E. is, through his mother, Elizabeth, the heir of Susan, he is entitled to the estate of Suez—not, perhaps, because he is the heir of Suez, but because he is the heir of the mother of Suez, and as such is, under the statute, entitled to take.

"We do not think that the provisions of Section 1386 have application to illegitimates; but that the

rights of such persons are derived from Sections 1387 and 1388.",

The California court then gets around the objectionable provision "but he does not represent his father or mother," by reasoning that under the rules of the common law the term "kindred" includes only those who are legitimate

> "Otherwise, we would have the construction that an illegitimate daughter is an heir of her mother, and as such may take the estate of another illegitimate daughter of the same mother, but that the legitimate child of such illegitimate daughter cannot take." (*In the matter of the Estate of Suez Magee*, 63 Cal. Rep. 414 (1883).)

Delaware

> "The statute recognizes the illegitimate as the 'child' of his mother for the purpose of inheriting her property under paragraph (1) of the Rules of Distribution in Sec. 512 on a basis of complete equality with legitimates. To deny similar recognition under the other paragraphs of the same section seems to us to be both *unjust* and *illogical*. *It is true that the literal reading of the statute appears to confine its operation to property inherited directly from the mother.*
>
> "But our courts have frequently held that a literal reading of statutory language that leads to unjust or mischievous results is to be avoided so far as reasonably possible. See, for example, the recent case of *Magill v. North American Refractories Company*, Del. 128 A.(2d) 233, and cases cited. We have said that to deny to the illegitimate the right asserted by her is both unjust and illogical. The injustice of the result needs no comment. Indeed, it is candidly conceded by the opposing claimants. And the illogic is equally clear. *If a literal construction of the statute be adopted, the legitimate brother may inherit from the illegitimate sister, though fully qualified to share*

with him the estate of the common mother, may not inherit from him as his sister."

"The result of such a construction would be that statutes obviously designed to remove the so-called 'taint' of illegitimacy would enlarge the rights of the legitimates to inherit in right of their mother but would make no corresponding enlargement for the benefit of the illegitimates." (Emphasis by petitioner) *In re Estate of Klingaman*, 36 Del. Ch. 200; 128 A. (2d) 341; 60 A.L.R. (2d) 1175.

In this case the Delaware court preferred to reverse its previous decisions, rather than be a party to "injustice" and "illogic," as the Chief Justice puts it. The special statute on illegitimates' rights of heirship is to all intents the same as the special section of the State of Washington.

Iowa

"Just why a person, begotten and born out of lawful wedlock, an innocent victim of the indiscretion of his parents, should have received the odium of the church, state, and all society and have been denied the right to inherit property from any ancestor, not even excepting his father or mother, is a matter which is difficult to understand, and unnecessary to discuss. This court has characterized it as 'one of the reproaches of the common law which has shocked the legislative and judicial conscience of the civilized world.'" *In re Clark's Estate*, 228 Iowa 75, 290 N.W. 13, 31 (1940).

"But bastardy is the sin of the parent; not of the child. The illegitimate child is as innocent as the Babe of Bethlehem. Yet the common law held its fiction as a shield over the guilty parent and frowned upon the guiltless child with the disdain of a Pharisee * * *." *McKellar v. Harkins*, 183 Iowa 1030, 166 N.W. 1061.

Maryland

"By virtue of these statutes, (same as those of the State of Washington), the plaintiff was as fully capable of inheriting from his mother as if he were legitimate; and his mother's sister, if she had survived, would have had an undoubted right to inherit from him upon his decease. *There is no provision, however, among those we have thus far quoted, which expressly enables an illegitimate to take by descent or distribution the property of a brother or sister of his deceased mother.* But with respect to the descent of real estate, it is provided by Section 27 of Article 46 of the Code, under the same subtitle as Section 30, previously mentioned, that: 'If in the descending or collateral line, any father or mother shall be dead, the child or children of such father or mother shall by representation be considered in the same degree as the father or mother would have been if living, and shall have the same share of the estate as the father or mother, if living, would have been entitled to, and no more.' In reference to the distribution of personal property it is provided by Section 127 of Article 93 that 'the child or children of a brother or sister of the intestate shall stand in the place of such brother or sister.'

"° ° ° The decisive question thus presented is not whether the appellant would be so entitled merely by force of the section making him capable of inheriting direct from her mother, or whether the term 'child' as ordinarily used in the statute, would include an illegitimate, but whether, under a codified system of laws *by which such a person is invested with the full qualifications of legitimacy with reference to the inheritance of her mother's estate, she is within the purview of a constituent provision that the estate which the deceased mother would have inherited shall pass* to her child or children. In our judgment this question should be answered in the affirmative. It would certainly seem to be a reasonable construction of statutory provisions which are codified together as parts of the same general plan of descent and distribution to hold that one who is

placed in the position of a lawfully begotten child for the purpose of inheriting from his mother should be regarded as a 'child' of the mother within the intent of the law for the purpose of succeeding to the estate which she would have inherited if she had survived." (Emphasis by petitioner) *Barron v. Zimmerman*, 117 Md. 296, 83 Atl. 258.

Barron v. Zimmerman, therefore, stands as unassailable authority that one who is placed in the position of a lawfully begotten child for the purpose of inheriting from his mother should be regarded as a child of the mother within the intent of the general statute of descent and distribution, and should be recognized as a sibling of the half or whole blood with other children of the mother.

Rhode Island

"* * * Our court, having thus construed the statute as making an illegitimate child of the kindred of his mother, applied that conclusion to the question before it, and held *that as the 'two illegitimates have been made by the statute daughters of the same mother, they were in law sisters of each other and entitled to inherit to each other directly, and not through the mother, under the third provision of our statute of descent.* Thus the court held that by reason of the remedial statute the third provision of our statute of descent did not restrict the descent therein provided between brothers and sisters to legitimate brothers and sisters, but enlarged that provision to include the illegitimate children of a mother equally with her legitimate children." (Emphasis by petitioner) (*Rhode Island Hospital Trust Co. v. Hodgkin*, 48 R.I. 459, 137 Atl. 381.)

Tennessee

The question before the court was whether the illegitimate nephew was entitled to take the share his mother would have taken had she survived decedent. In holding

that the illegitimate nephew of the decedent should take his mother's share of his aunt's estate, the court said:

> ° ° ° Now, it is conceded that, had the complainant in this case been legitimate, there would be no question as to the right to take his mother's portion of the property involved in this litigation, because the statute of descent and distribution expressly provides that in the event of the death of the brother or sister of the intestate during the intestate's lifetime, leaving issue alive, such issue shall represent and take such estate as the deceased parent would have taken. Nor will it be denied that had the mother of complainant left a legitimate child, as well as complainant, then that legitimate child would have taken that portion of the estate of the mother's sister which the mother would have taken. If this be true, and the statute of 1866-67 gives to illegitimates the right to inherit from their mother equally with the other child or children the estate of the mother, according to the general laws of descent and distribution, does it not necessarily follow *that the illegitimate could inherit equally with the legitimate, and in the same manner?* The Statute (Section 4169 of the Code) therefore gives to the illegitimates the same right to inherit from their mother as the legitimate children. The illegitimates are put on the same plane and footing as the legitimates, so far as the purpose of inheriting from the mother is concerned, and for this purpose they are legitimate. They then have all the same kindred as her legitimate children have, and when the latter take by descent and distribution according to the degrees prescribed by statute, the illegitimates take equally with them. The illegitimates take in the same character and in the same manner, as well as to the same extent, as the legitimates, and therefore complainant inherits from his aunt that portion of the estate which his mother would have inherited had she been living." *Dennis v. Dennis*, 105 Tenn. 86, 58 S.W. 284 (1900).

Alabama

The special statute on illegitimate children is the same

in Alabama as the Washington State statute, without, however, the provision "but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred either lineal, or collateral . . ."

In the case of *Hudson v. Reed*, 66 So. (2d) 909 (1953), the question before the court was whether the descendants of an illegitimate half-sister could share as next of kin in the estate of her legitimate half-brother. The Supreme Court held that the statute was to be construed in *pari materia* with the general statute on descent and distribution, that the statute permitted inheritance *through* as well as *from* the illegitimate mother, and that it should be liberally construed:

> "Although it (the statute) is in derogation of the common law, it is basically remedial and beneficent, and we think it should be liberally construed in order to carry out its obvious purpose of assuaging the harsh and unjust rule of the common law." (Page 912)

And further

> "Is it reasonable to hold, then, that an illegitimate child has no inheritable blood when the flow of the blood is in his direction and at the same time hold that he has inheritable blood for the purpose of transmitting inheritance to a kindred on the part of his mother? Can it logically be said if was intended that inheritable blood should flow in only one direction? * * * The trend of legislation on the subject everywhere has been to lessen the harsh and illiberal rule of the common law."

On the second question involved herein, we beg to submit as authority, *In re Bradley*, 185 Wis. 393, 201 N.W. 973, 38 A.L.R. 1, in which the court lays down the rule that inheritable blood (as we also argue in Appellant's

brief) is the basis for inheriting property, and that the legislature has no power to interrupt "the natural course of descent of property"; that such an interruption is "repugnant to fixed notions of natural justice . . . that the right to inherit property is a natural right *which the legislature cannot destroy.*" (Emphasis supplied.)

SUMMARY AND CONCLUSION

Perhaps it would be presumptuous for petitioner to submit that under the enlarged jurisdiction of the U. S. Supreme Court by the Judiciary Act of December 23, 1914 (38 Stat. 790) it is not a *sine qua non* that the question for review should be strictly Federal.

If the decision of the State Court is essentially arbitrary and in disregard of well established principles of law and justice, it is cognizable in this great Court. (Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States, by Wolfson and Kurland, edition 1951, Section 89 et seq., pp. 161-190).

With this in mind, can the State Court treat this momentous question as a closed book by pointing at an isolated statute with the mere comment that "the appellant makes an intriguing argument"? See Decision, 377 P. 2d 263).

The question goes into the vitals of the making of the American nation, which is neither England nor France, but, on the contrary, in certain important phases, so much more humane and necessarily more just that it may be said it constitutes a revolt to their views and concepts of law and justice.

The principle or rule of construction known as in *pari*

materia pervades every decision of the State Courts, where illegitimate children's status and rights of heirship have come up. To dismiss the question so lightly, as the State Supreme Court does, while admitting that both statutes, the general and the special are clear and unambiguous, to decline to treat all three statutes as in *pari materia*, is not only digressing from the courts of most, if not all, the jurisdictions where this same issue was decided; but it results in that limited justice, which is not the whole justice, just as truth is only truth when it is the whole truth.

In considering the three statutes together in an effort to find the underlying legislative intent, the absurd and unreasonable must give way to the rational and sensible, and, in that process of dovetailing and harmonizing inconsistencies, even reading legal relationships into the general statutes, there is to be found the legislative intent and feeling. Why did the Legislature, in enacting the 1927 general statute, 11.04.020, use the term "children of any deceased brother or sister, by right of representation." If, as the State Court points out, it meant to include the petitioner, as "she is indeed the child of a deceased sister of decedent," then the earlier exclusion from rights of heirship by representation in Statute RCW 11.04.080, of necessity, is repealed by implication. (*Barnett v. Woods*, 196 Miss. 678, 18 So. (2d) 443.)

For the foregoing reasons and upon the grounds set forth herein, we submit that this petition for a writ of *certiorari* may be granted.

Respectfully submitted,

CHRIST D. LILLIONS,
Counsel for Petitioner

May 1, 1963

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Estate of
H. A. GAND, Deceased,
BALBINE DENISE GAND BARON,
Appellant,
v.
ROGER E. VALLETON,
Respondent.

No. 36292
Department One
Filed Dec. 27, 1962

QUAERE: Under Washington's law of intestate succession may an illegitimate child claim, as representing his or her mother, any part of the estate of the mother's kindred, either lineal or collateral?

Or, stated in the posture of the *instant* case, may the illegitimate daughter of the decedent's predeceased sister take, under the laws of intestate succession, any part of the decedent's estate, claiming through her mother?

ANSWER: No, unless the requirements of RCW 11.04.080[1] relative to acknowledgment and adoption have been met.

CIRCUMSTANCES WHICH RAISE THE PRESENT ISSUE: Decedent's only heirs are the children of a predeceased sister. Her children are two in number, an illegitimate daughter

1. "Every illegitimate child shall be considered as in lieu to the person who shall in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as heir of his mother, and shall inherit his or her estate in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock, but he shall not be allowed to claim as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, and adopted him into his family, in which case such child and the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate, and without issue, the others shall inherit his estate, and be heirs, as heretofore provided in like manner, as if all the children had been legitimate, saving to the father and mother respectively their rights in the estates of all the said children, as provided heretofore in like manner as if all had been legitimate."

and a legitimate son. The controversy is between them; the illegitimate daughter claiming half the estate. The trial court entered an order, decreeing the legitimate son to be the sole heir and distributing the net balance of the estate to him. The illegitimate daughter appeals.

COMMENTS: The appellant makes an intriguing argument. As we said in *Wasmund v. Wasmund*, 90 Wash. 274, 278, 156 Pac. 3, 5 (1916), in response to an argument similar to appellant's,

> "... We are invited to consider the injustice of the common law rule and hold, inasmuch as an illegitimate child is always and 'shall in all cases be considered as heir to the mother,' that it was the intention of the legislature to raise an illegitimate to the rank of a legitimate inheritor. We may grant the injustice of the common law, but the statute is plain. We have no power to extend it beyond its terms. ..."

We must, as in *Wasmund v. Wasmund, supra*, assert that the statute is plain. RCW 11.04.080. (see note 1). It states that every illegitimate child shall be, in all cases, considered as an heir of his mother as though born in lawful wedlock; it states that such a child shall be considered the heir of any person who, in writing signed in the presence of a competent witness, acknowledges himself the father of the child. Then the statute specifically covers the present situation:

> "... but he [the illegitimate child] shall not be allowed to claim as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless ..."

and here follow conditions relating to marriage of the parents, acknowledgment, and adoption, which are concededly nonexistent in the present case.

We cannot write out of the statute the words which bar the appellant from claiming, as representing her mother, any part of the estate of her mother's kindred. To change the statute is the function of the legislature.

We are urged to consider RCW 11.04.080, in *pari materia* with RCW 11.04.020 (3):

> "If there be no issue, nor husband, nor wife, nor father and mother, nor either, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation."

As the appellant points out, *she is indeed the child of a deceased sister of decedent, claiming part of the decedent's estate by right of representation;* but she belongs to a class of children who are the subject of a special statute (RCW 11.04.080) which is plain and unambiguous. *In re Baker's Estate*, 49 Wn.(2d) 609, 610, 304 P.(2d) 1051 (1956).

Where there is no ambiguity in the statute, there is nothing for the court to interpret. *In re Baker's Estate, supra, Public Hospital District No. 2 of Okanogan County v. The Taxpayers of Public Hospital District No. 2 of Okanogan County*, 44 Wn.(2d) 623, 624, 269 P.(2d) 594, 595 (1954).

CONCLUSION: The decree of distribution appealed from is affirmed.

HILL, J.

We concur:

FINLEY, C. J.

WEAVER, J.

ROSELLINI, J.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Estate of H. A. GAND, Deceased, BALBINE DENISE GAND BARON, *Appellant*, v. ROGER E. VALLETON, *Respondent*.	No. 36292 PETITION FOR REHEARING

Comes now BALBINE DENISE GAND BARON, appellant in the above cause, and petitions the court for a rehearing of her case *en banc*, and respectfully submits the following grounds and reasons:

ONE: The departmental decision in this case was made subsequent to the death of the Honorable Harry Ellsworth Foster, a member of the department which heard it, and it has been the experience of appellant's attorney that upon such an event cases heard are reset for a hearing either before a department or *en banc*. (*State v. Cyrus W. Maxfield*, 46 Wn.(2d) 822; which was reset by Chief Justice Grady twice for hearing *en banc* by reason of the death of the Honorable Ralph O. Olson, and the appointment to the U. S. Circuit Court of Appeals, 9th Circuit, of the Honorable Oliver D. Hamlin, Jr., both of whom had participated in the hearing of the case but not in the final decision.)

TWO: The decision of the court grants that there is a conflict between the special statute (RCW 11.04.080) and the general statute of descent and distribution (RCW 11.04.020 (3)), to which the special statute expressly refers by the terms "in the same manner," etc., as follows:

"We are urged to consider RCW 11.04.080, in *pari materia*, with RCW 11.04.020 (3):

"'If there be no issue, nor husband, nor wife, nor father and mother, nor either, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation.'

"As the appellant points out, *she is indeed the child of a deceased sister of decedent, claiming part of the decedent's estate by right of representation*, but she belongs to a class of children who are the subject of a special statute (RCW 11.04.080) which is plain and unambiguous. *In re Baker's Estate*, 49 Wn. (2d) 609, 610, 304 P. (2d) 1051 (1956)."

Hence, it is the view of appellant that the sections refefred to do not call for being written out of the statute but make it mandatory that they be reconciled, and if they cannot be construed consistently with each other as *pari materia*, that one of them or a portion thereof be deemed as having been necessarily repealed by the legislature, (not by the court, as appellant specifically argues on p. 44 of her brief).

THREE: The special statute, insofar as it purports to cut short the meaning or content of the term "children" and thereby "interrupting the natural course of descent of property . . . is repugnant to fixed notions of natural justice . . . that the right to inherit property is a natural right which the legislature cannot destroy." *In re Bradley*, 185 Wis. 393, 201 N.W. 973, 38 A.L.R. 1 on p. 4); hence, it is appellant's view that so much of RCW 11.04.080 as purports to forbid natural born children from inheriting in the same degree as legitimate born ones is discriminatory and class legislation, in violation of Art. 1, Section 12 of our State Constitution and Section 1 of the Fourteenth Amendment of the Federal Constitution.

ARGUMENT

POINT 1. We submit this without any comment, other than to say that an important case such as the present, where two children of the same mother, both affectionately loved by mother and uncle, are disputing a net inheritance of $34,000.00, merits at least a decision by the full department, if not the full court, especially when the question at issue comes up for the first time in this state.

POINT 2. In *Wasmund v. Wasmund*, 90 Wash. 274, 278, 156 Pac. 3, 5 (1916), an illegitimate child of a deceased mother claimed the right to inherit the community property to the exclusion of decedent's surviving husband. The court considers the statute on illegitimate's rights of inheritance (not changed since) together with the statute on descent of intestate's property (amended since to its present form RCW 11.04.020, subd. 3):

> "The word 'issue' had been theretofore defined in Section 13 of the Act of 1875, as 'all lawful lineal descendants of the ancestor.' The Act of 1879 does not refer to the rights of an illegitimate child." (Pp. 277-278.)

The word "children" does not appear in the applicable section, as in the amendment of 1927, RCW 11.04.020 (3). In the course of the opinion the court states the following:

> "Children by a former marriage are legitimate issue and are clearly entitled to inherit the common property. Counsel also rely with much assurance upon cases from other states. *In all of them the courts very properly followed a rule of liberal interpretation, the statutes being subject to interpretation. In the instant case the statute being in no way doubtful, but plain and certain in its terms, we are not put to*

the necessity of interpretation or construction. We have only to declare the law as we find it. (Emphasis supplied.)

A reference to Appellant's Brief will disclose that the statutes in other jurisdictions which the courts reconciled as in *pari materia*, were essentially no different in their terms than the two sections in our code. The courts very plainly refused to be parties to what was "illogic" and "unjust." *(In re Estate of Klingaman*, Del. 128 A. (2d) 311, 60 A.L.R. (2d) 1175.) The Supreme Court of Delaware went so far as to reverse its previous decisions rather than adhere to the technical meaning of the English common law that the terms "child" and "children" as far as the mother was concerned, did not "comprehend her illegitimate as well as her legitimate offspring." (See also *Dickinson's Appeal*, 42 Conn. 491, 19 Am. Reports, 553; Appellant's Brief, pp. 7-8.)

In re Baker's Estate, 49 Wn. (2d) 609, 610, 304 P. (2d) 1031 (1956), the question before the court was whether a mere letter written by the deceased acknowledging the claimant as his son, was a compliance with the method of acknowledgment of an illegitimate child by a father, as provided in RCW 11.04.080, which it was not. As we pointed out in Appellant's Brief, Section RCW 11.04.080 covers a multitude of varied matters, the injunction against an illegitimate child claiming as representing his . . . mother any part of the estate of her kindred, either lineal or collateral etc., being only one of them.

The court's opinion also cites the case of *Public Hospital District No. 2 of Okanogan County v. The Taxpayers of Public Hospital District No. 2 of Okanogan*

County, 44 Wn.(2d) 623, 624, 269 P.(2d) 394, 395 (1954). To the three rules of statute construction set forth in that decision, may we respectfully add a fourth one from the syllabus of *Barnett v. Woods*, 196 Miss. 678, 18 So.(2d) 443, as follows:

> "A statute not expressly repealed or amended is required to be construed in harmony with a subsequently enacted statute so that both statutes may be effectuated."

POINT 3. POWERS OF THE LEGISLATURE. CONSTITUTIONALITY OF THE LIMITATION CLAUSE, LIMITING RIGHTS TO MOTHER'S ESTATE.

This question was raised by the Supreme Court itself at the hearing, more specifically by the Chief Justice. It would seem, therefore, that notwithstanding the rule against a review of questions not raised in the lower court, appellant should be allowed to submit this vital issue and respectfully asks the court to pass on it upon a rehearing.

In re Bradley, 183 Wis. 393, 201 N.W. 973, 38 A.L.R. 1, the court lays down the rule that inheritable blood (as we also argue in Appellant's Brief) is the basis for inheriting property, and that the legislature has no power to interrupt "the natural course of descent of property", that such an interruption is "repugnant to fixed notions of natural justice . . . that the right to inherit property is a natural right *which the legislature cannot destroy*." (Emphasis supplied.)

We, therefore, submit that the restriction of the rights of appellant to inherit from her mother only, but not her mother's brother, is discriminating class legislation, in violation of Art. 1, Section 12 of our State Constitution

and Section 1 of the Fourteenth Amendment of the Federal Constitution.

Respectfully submitted,

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Attorney for Appellant.

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Seattle 4, Washington

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Estate of H. A. GAND, Deceased, BALBINE DENISE GAND BARON, *Appellant*, v. ROGER E. VALLETON, *Respondent*.	REMITTITUR No. 36292 King County No. 757741

This is to certify that the opinion of the Supreme Court of the State of Washington filed on December 27, 1962, became the final judgment of this court in the above entitled case on February 8, 1963. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 33 on Appeal, costs are taxed as follows:

Two Hundred Twenty-one and 42/100 ($221.42) Dollars in favor of respondent and against appellant and her surety Hartford Accident and Indemnity Company.

The Petition for Rehearing was Denied February 8, 1963.

cc: Court Reporter
Mr. Christ D. Lillions
Moriarty, Olson & Campbell
Mr. Richard T. Olsen

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 8th day of February, A.D. 1963.

WILLIAM M. LOWRY
Clerk of the Supreme Court, State of Washington

APPENDIX D

WASHINGTON STATE STATUTES:

RCW 11.04.080. "*Inheritance by illegitimate child.* Every illegitimate child shall be considered as an heir to the person who shall in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as heir of his mother, and shall inherit his or her estate in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim as representing his father or mother any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, and adopted him into his family."

RCW 11.04.050. "*Inheritance from illegitimate child.* If any illegitimate child shall die intestate without lawful issue, his estate shall descend to his mother, or in case of her decease, to her heirs at law."

RCW 11.04.020. "*Descent of separate real property.* If there be no issue, nor husband, nor wife, nor father and mother, nor either, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation."